

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN MARSHALL EVERETT, PAMELA A.  
KRAMER, and WALTER W. LAWRENCE, on  
Behalf of Themselves and All Others Similarly  
Situating,

Plaintiffs,

v.

MICHAEL BOZIC, EDWIN J. GARN, WAYNE  
E. HEDIEN, DR. MANUEL H. JOHNSON,  
JOSEPH J. KEARNS, MICHAEL E. NUGENT,  
FERGUS REID, CHARLES A.  
FIUMEFREDDO, JAMES F. HIGGINS,  
MORGAN STANLEY DEAN WITTER & CO.,  
INC., MORGAN STANLEY INVESTMENT  
ADVISORS, and JOHN DOES NO. 1 through  
100,

Defendants.

JURY TRIAL DEMANDED

Case No. 05-CV- 296 (DAB)

**MEMORANDUM IN OPPOSITION TO DEFENDANTS**  
**CHARLES A. FIUMEFREDDO AND JAMES F. HIGGINS'S**  
**MOTION TO DISMISS**

On May 6, 2005, Morgan Stanley Defendants filed a Memorandum of Law in Support of the Morgan Stanley Defendants' Motion to Dismiss the Complaint [hereinafter Morgan Stanley's Motion to Dismiss]. On June 16, 2005, Defendants Fiumefreddo and Higgins filed a separate Motion to Dismiss and expressly adopted the Morgan Stanley Motion to Dismiss.

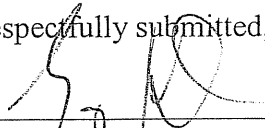
Defendants Fiumefreddo and Higgins make no substantive argument not included in the Morgan

Stanley Motion to Dismiss. Therefore, for the purposes of responding to Defendants Fiumefrededo and Higgins's Motion to Dismiss, Plaintiffs adopt and incorporate all arguments made in Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss against Morgan Stanley Defendants, which was filed on June 8, 2005.

Dated: June 28, 2005

Respectfully submitted,

By:

  
Perry Weitz  
Gary Klein (GK-5632)  
**WEITZ & LUXENBERG, P.C.**  
180 Maiden Lane  
New York, New York 10038-4925  
(212) 558-5500  
(212) 344-5461 fax

Randall K. Pulliam  
**BARON & BUDD, P.C.**  
3102 Oak Lawn Ave., Suite 1100  
Dallas, Texas 75219-4281  
(214) 521-3605  
(214) 520-1181 fax

Hank Bates  
J. Allen Carney  
Brooke Augusta Owen  
**CAULEY BOWMAN CARNEY & WILLIAMS**  
11311 Arcade Dr., Suite 200  
Little Rock, Arkansas 72212  
(501) 312-8500  
(501) 312-8505 fax

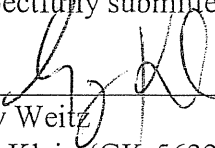
The Independent Trustee Defendants make no substantive argument not included in the Morgan

Stanley Motion to Dismiss. Therefore, for the purposes of responding to Independent Trustee Defendants' Motion to Dismiss, Plaintiffs adopt and incorporate all arguments made in Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss against Morgan Stanley Defendants, which was filed on June 8, 2005.

Dated: June 28, 2005

Respectfully submitted,

By:

  
Perry Weitz  
Gary Klein (GK-5632)  
**WEITZ & LUXENBERG, P.C.**  
180 Maiden Lane  
New York, New York 10038-4925  
(212) 558-5500  
(212) 344-5461 fax

Randall K. Pulliam  
**BARON & BUDD, P.C.**  
3102 Oak Lawn Ave., Suite 1100  
Dallas, Texas 75219-4281  
(214) 521-3605  
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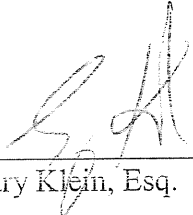
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**CAULEY BOWMAN CARNEY & WILLIAMS**  
11311 Arcade Dr., Suite 200  
Little Rock, Arkansas 72212  
(501) 312-8500  
(501) 312-8505 fax

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS was served via first class mail on  
this 27<sup>th</sup> day of June, 2005 on each counsel of record listed below:

Steven F. Molo  
Brian H. Polovoy  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022-6069

Charlotte Moses Fischman  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036

  
\_\_\_\_\_  
Gary Klein, Esq.

Index No.

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SOUTHERN DISTRICT OF NEW YORKJOHN MARSHALL EVERETT, PAMELA A. KRAMER,  
and WALTER W. LAWRENCE, on Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

v.

MICHAEL BOZIC, ET AL.,

Defendants.

MEMORANDUM IN OPPOSITION TO DEFENDANTS CHARLES A. FIUMEFREDDO AND JAMES F. HIGGIN'S  
MOTION TO DISMISS and MEMORANDUM IN OPPOSITION TO INDEPENDENT TRUSTEE DEFENDANTS'  
MOTION TO DISMISS

WEITZ &amp; LUXENBERG, P.C.

Attorneys for Plaintiffs

180 Maiden Lane  
New York, NY 10038  
(212) 558-5500*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous*

Dated: .....

Signature.....

Print Signer's Name .....

Service of a copy of the within

is hereby admitted.

Dated: .....

Attorney(s) for

## PLEASE TAKE NOTICE

Check Applicable Box

☐  
NOTICE OF  
ENTRYthat the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

20

☐  
NOTICE OF  
SETTLEMENTthat an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at  
on 20 , at M.

Dated:

WEITZ &amp; LUXENBERG, P.C.

Attorneys for

180 Maiden Lane  
New York, NY 10038

To: